



Policy Number: PPQ-DA-2005-06

United States  
Department of  
Agriculture

**SUBJECT:** Official Time for Equal Employment Opportunity Complaints

Animal and Plant  
Health Inspection  
Service

Date: November 2, 2005

Plant Protection  
and Quarantine

**TO:** All Plant Protection and Quarantine Employees

Washington, DC 20250

This memorandum explains the policy of Plant Protection and Quarantine (PPQ) with respect to granting employees "official time" when seeking to file a complaint that is related to equal employment opportunity (EEO) or otherwise participating in the EEO process.

The Equal Employment Opportunity Commission (EEOC) requires that the Agency allow complainants who are employees to use "a reasonable amount of official time, if in duty status, to prepare the complaint, "and "to respond to Agency and EEOC requests for information" (29 CFR 1614.605(b)). However, the employee and the supervisor should arrive at a mutual understanding for the amount of official time to be used prior to the employee's use of such time. Employees are required to obtain prior approval on any work time spent addressing EEOC concerns. That section of the regulations further states, "the Agency is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer." EEOC Management Directive (MD)-110, defines "reasonable" as "whatever is appropriate under the circumstances of the complaint, in order to allow a complete presentation of the relevant information associated with the complaint and to respond to Agency requests for information" (Chapter 6, Section VIII C). Although the actual number of hours provided to complainants and their employee representatives will vary according to the circumstances of the case and the Agency's need to have its employees available to perform work on a regular basis, MD-110 states, "the complainant and the Agency should arrive at a mutual understanding as to the amount of official time to be used prior to the complainant's use of such time."

#### 1. Pre-complaint (informal) and Complaint Preparation and Presentation:

A reasonable amount of official time will be allowed for an employee to make contact, discuss, and meet to attempt resolution of pre-complaint issues with EEO Counselors, Human Resources Specialists and/or Alternative Dispute Resolution (ADR) mediators. A reasonable amount of time, not to exceed four (4) hours, may be granted for an employee to prepare for an initial pre-complaint contact, including time to discuss issues with the employee's representative. PPQ will allow employees, upon written request, a reasonable amount of official time to prepare and present an EEO complaint. Official time for such purposes will typically include time to assemble



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documents to be submitted in conjunction with the complaint; time at the employee's official duty station or by phone to meet or consult with the employee's representative to assist in complaint preparation; and time to write up the complaint. Official time will be granted to employees, upon written request, to prepare responses to questions or information requests from government officials responsible for processing and or attempting to resolve EEO complaints, including pre-complaints. These officials might include EEO Counselors, Human Resource Specialists, Agency designated mediators, designated EEO investigators, or officials from the USDA Office of the General Counsel, the EEOC, or the USDA Office of Civil Rights.

## 2. Meetings and Hearings:

Official time will be permitted for employees to travel to and attend meetings initiated by EEO Counselors, EEO complaints investigators, ADR mediators and other Agency officials to discuss and/or attempt complaint resolution. A reasonable amount of official time may be permitted for employees to prepare for such meetings, but in most cases not to exceed 4 hours. A reasonable amount of official time will be afforded complainants and their employee representatives, upon written request, to prepare for meetings and hearings associated with complaint processing as initiated by the Agency or EEOC. Again, this would usually not exceed 4 hours. Although individual circumstances will vary by case, the need for large amounts of time to prepare for meetings and hearings is expected to be rare, being defined in terms of hours (versus days or weeks). Official time will be permitted for employees to attend Agency or EEOC-initiated meetings or hearings. If such meetings or hearings are held outside the normal work hours of the complainant or representative, work schedules will be adjusted or credit hours earned so as to minimize or eliminate the number of uncompensated hours while attending those sessions. Official time will be granted to complainants and their employee representatives for travel to Agency or EEOC-initiated meetings in conjunction with complaint processing if such travel is otherwise compensable under Title 5 of the U.S. Code, and the Fair Labor Standards Act (FLSA).

## 3. Official Time Authorization:

Since all hours reported on the Time and Attendance Record must be certified by the employee's supervisor as being hours worked or leave used, employees and their employee representatives seeking to use official time in conjunction with preparing an EEO complaint must obtain **prior** approval from their supervisors to ensure such requests are consistent with Agency policy. The employee will be expected to provide the supervisor with sufficient information to determine if the amount of time being requested is reasonable. Requests must be made in writing. E-mail requests are acceptable to protect the confidentiality of the complaint process. Other than union representatives, whose use of official time is established under contract provisions, supervisors may set limits on the aggregate amount of time their employees may spend representing others to ensure continued normal work operations. A supervisor will consult with APHIS Civil Rights Enforcement and Compliance (CREC) Staff and/or

employee relations personnel, should questions arise pertaining to setting limits on the amount of time, especially if such requests exceed 8 hours. In obtaining information to establish a reasonable amount of time, the employee will not be required to reveal confidential case information. If any official time is denied, a written statement will be prepared by the supervisor containing the reasons for the denial. A copy will be provided to the complainant and APHIS CREC Staff for the complaint case file.

#### 4. Miscellaneous:

Use of official time is not authorized for employees, whether acting on their own behalf or as a member of an outside organization/employee group, to publicize or solicit contacts from employees who may be seeking representation. Official time will not be authorized for employees or their-employee representatives to prepare, present, or travel in conjunction with civil actions filed in Federal District Court. Official time is not authorized for employees to represent external applicants in conjunction with complaints against APHIS or prepare and present a class complaint that arose in another Agency.

#### 5. Agency Provided Resources and Travel:

The EEOC Management Directive (MD)-110 sets forth the general rule regarding a complainant's use of government property in pursuing a discrimination complaint. "The complainant's or complainant's non-attorney representative's use of government property (copiers, telephones, word processors) must be authorized by the Agency and must not cause undue disruption of Agency operations. " (Chapter 6, Section VIII E).

As noted, employees must request official time in advance of the actual time requested as well as obtain specific permission to use Agency property related to pursuing an EEO Complaint. Such requests must be in writing and the supervisor's approval or denial must be in writing. If the request is granted and more time is needed, requests for extensions/additional time must be in writing as well. The same applies to subsequent supervisory approval or denial. A copy of all requests for official time will be forwarded to the Civil Rights Enforcement and Compliance (CREC) staff, as may be appropriate.

If you have any questions or need more information, please contact Mike Lidsky, Special Assistant to the Deputy Administrator at 301-734-5762.



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